

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

CRP.No. 1219 of 1995(B)

(R.C.A. 143/1992 OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM)

**PETITIONERS/RESPONDENTS 1 TO 5 BEFORE THE APPELLATE AUTHORITY
AND RENT CONTROL COURT:**

1. VILASINI, W/O. LATE VELAYUDHAN, AGED ABOUT 58,
AAKKAPARAMBIL, RESIDING AT CHOORAKATTU
THEKKUMBHAGOM, TRIPUNITHURA.
2. UNNIKRISHNAN ALIAS PONNAN, AGED ABOUT 38 YEARS,
S/O. LATE VELAYUDHAN OF -DO- -DO-.
3. MURUGAN, S/O. LATE VELAYUDHAN,
AGED ABOUT 34 YEARS,
-DO- -DO-.
4. DINESAN, S/O. LATE VELAYUDHAN, AGED ABOUT 31 YEARS,
-DO- -DO-.
5. REMANI, W/O. LATE SHAJI, PULIKKUNNE,
AGED ABOUT 29 YEARS,
KULASEKHARAPURAM VIA. KADUTHURUTHY.

BY ADV. SRI.K.P.BALASUBRAMANYAN.

**RESPONDENTS/ APPELLANTS IN R.C.A/PETITIONERS & R6 & 7 BEFORE THE
RENT CONTROL COURT:**

1. DENNY, AGED 35 YEARS, S/O. JOSEPH PINDIS AT PANNIPILLIL
HOUSE, NADAMA VILLAGE, NADAMA DESOM,
KANAYANNUR TALUK.
- *2. SARA, D/O. ULAHANNAN, AGED 71 YEARS,
PANNIPILLIL HOUSE,
NADAMA VILLAGE, NADAMA DESOM,
KANAYANNUR TALUK. *(DIED)

C.R.P. NO. 1219/1995-B:

- **3. JOSEPH PINDIS, W/O. ULAHANNAN, AGED 68 YEARS,
RESIDING AT PANNIPILLIL HOUSE,
NADAMA VILLAGE, NADAMA DESOM,
KANAYANNUR TALUK. **(DIED)**

***IT IS RECORDED THAT THE 2ND RESPONDENT DIED AND RESPONDENTS
1 AND 3 ARE THE LEGAL REPRESENTATIVES OF THE DECEASED 2ND
RESPONDENT AS PER ORDER ON MEMO C.F. 7076/00.**

- 4. M.V. UDAYAKUMAR, AGED ABOUT 44 YEARS,
PROPRIETOR, PAN HOUSE, IST FLOOR,
EVEREST HOTEL BUILDING,
EAST FORT GATE, TRIPUNITHURA.**
- 5. VENUGOPALAN, S/O. KRISHNAN,
AGED ABOUT 36 YEARS,
SREEKALA MEDICALS, 1ST FLOOR,
EVEREST HOTEL BUILDING JUNCTION,
TRIPUNITHURA.**

- **ADDL.R6. MRS. LEELA PINDIS,
W/O. LATE JOSEPH PINDIS,
PANNIPPILLIL HOUSE,
NADAMA VILLAGE, KANAYANNUR TALUK.**

- **ADDL.R7. DR. JOHNY PINDIS,
S/O. LATE JOSEPH PINDIS.**

****R1 IS RECORDED AS ONE OF THE LEGAL REPRESENTATIVE OF THE
DECEASED R3 AND ADDL. R6 AND R7 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 3RD RESPONDENT VIDE ORDER DATED
25/09/2007 IN I.A. 3235/2006.**

BY ADV. SRI.VARGHESE C.KURIAKOSE

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05/11/2007,ALONG WITH C.R.P NO. 1945/ 1995 THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

C.R.P. NOS. 1219 & 1945/1995

Dated 5th November, 2007.

ORDER

Balakrishnan Nair, J.

C.R.P.No.1219/1995:

The petitioners are the legal heirs of the original tenant. Respondents 1 to 3 were the landlords and respondents 4 and 5 were the alleged sub-tenants. Respondents 2 and 3 died during the pendency of the revision and their legal heirs have been impleaded. The petitioners herein attack the finding of the appellate authority under Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as “the Act”). According to them, notice for eviction under Section 11(4)(i) of the Act can be issued only by the landlord. In this case, the 2nd respondent Smt.Sara was the landlord. But, the notice was issued by the 1st respondent Denny. Therefore, in the light of the proviso to Section 11(4)(i), no valid notice had been issued. So, the R.C.P was liable to be rejected. The Rent Controller held that there was no objectionable sub-lease and therefore, the

claim for eviction under Section 11(4)(i) was rejected. The appellate authority reversed the said finding. This Court set aside the order of the appellate authority and held that no valid notice was issued as provided under the proviso to Section 11(4)(i) by Smt.Sara and therefore, the R.C.P was liable to be rejected. The landlords appealed. The appeal was disposed of by the Apex Court, holding that in view of the junction of Smt.Sara as one of the petitioners, the C.R.P has to be heard by this Court on merits. Accordingly, the judgment of the Division Bench was set aside and the matter was remitted.

2. We heard the learned counsel on both sides. The petitioners urged the contention which was found favour with by the Division Bench of this Court earlier, that is, since Smt.Sara did not issue any notice, the R.C.P was liable to be dismissed, so far as the claim under Section 11(4)(i) is concerned. The said finding is rendered based on the fact that the ownership of the building was not transferred by Smt.Sara to Mr.Denny by some process known to law and therefore, Smt.Sara continued to be the landlord. The learned counsel for the respondents, on the other hand, relied on the decisions of the Apex Court which were relied by the appellate authority and also one decision of the Madras High Court in **Sengappan v.**

Arumbatha Veda Vinayagar Temple [2000 MLJR 198) and submitted that in view of the unregistered document of lease, the jural relationship of landlord-tenant can be validly found between the parties. But, we are of the view that the decision of the Apex Court in **Anthony v. Ittoop** [2000(3) KLT 123 (SC)] squarely covers the point in favour of the tenants. The Apex Court held in identical circumstances, that an unregistered lease deed cannot create any lease at all. We are not inclined to accept the contention of the learned counsel for the respondents that the deed could be used to find the jural relationship between the parties, as the decision in **Anthony's** case (supra) is directly in point. In the result, the revision is allowed. The judgment of the appellate authority allowing eviction under Section 11(4)(i) of the Act is set aside. No costs.

C.R.P.No.1945/1995:

3. In this revision the tenants challenge the finding of the appellate authority on the question of title of the 1st respondent Denny as the landlord of the scheduled premises. Earlier, the Division Bench of this Court held that by no process known to law, the title of the 2nd respondent Smt.Sara has been assigned in favour of the 1st respondent Denny. Though, the Apex Court set aside the judgment and remitted the matter, on this point there is

no consideration by the Apex Court. Once the judgment is set aside, this Court can also consider the said point de novo on merits. But, we are in respectful agreement with the reasonings and conclusions made by the Division Bench earlier on this point. Accordingly, the finding regarding the title in favour of the 1st respondent is set aside and the revision is allowed. No costs.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RA,MACHANDRAN NAIR, JUDGE.

Nm/